

(iii) Contract information required to enable the Borrower to develop a Funding Agreement, an Escrow Agreement and an Indemnification Agreement (the “agreements”).

(4) The Borrower shall develop and submit to the government for approval executed originals of:

(i) The agreements; and

(ii) A certified copy of a resolution of the board of directors authorizing the Borrower to enter into the agreements and to take such other action as is necessary to effect the purposes of the agreements.

(5) Upon receiving written RUS approval of the agreements and the form and substance of the board resolution, the Borrower shall:

(i) Establish and fund the Escrow Account; and

(ii) Provide written notice to the government of the Escrow Account number, the funding thereof, and such other information as required pursuant to the agreements.

(6) After the Borrower has funded the Escrow Account, the government shall issue Task Order(s) for consultant services in accordance with the terms and conditions of the applicable Retainer Contract.

**§ 1789.159 Contract administration.**

The government shall be solely responsible for the administration of a Consulting Contract and shall have complete control over the scope of the Consultant’s work, the timetable for performance, the standards to be applied in determining the acceptability of deliverables and the approval of payment of Invoices.

**§ 1789.160 Access to information.**

The Borrower shall not have rights in nor right of access to the work product of the Consultant. All analyses, studies, opinions, memoranda, and other documents and information provided by the Consultant pursuant to a Consulting Contract may be released and made available to the Borrower only with the approval of RUS. This section does not restrict release of information by RUS pursuant to the Freedom of Information Act (5 U.S.C. 552(a)(2)) or other legal process.

**§ 1789.161 Conflicts of interest.**

The standard for determining organizational conflicts of interest shall be as set forth in the FAR subpart 9.5 (48 CFR part 9, subpart 9.5); however, the identification of the existence of an organizational conflict of interest may be made by either the Administrator or the cognizant Contracting Officer. In the event an organizational conflict of interest is determined to exist, the cognizant Contracting Officer shall take the actions prescribed at FAR 9.504 (48 CFR 9.504) to attempt to avoid, neutralize or mitigate the conflict. Should these actions be deemed by the Administrator and the Contracting Officer to adequately resolve the conflict, the contracting action with the offeror/contractor may proceed. Should the Administrator or the Contracting Officer determine that an organizational conflict of interest still exists such that contract award or other contracting action cannot be taken (award of task/delivery order, etc.) the offeror/contractor shall be so informed by the Contracting Officer and be provided a reasonable opportunity to respond in accordance with FAR 9.504(e) (48 CFR 9.504(e)). After considering the contractor’s response, if it is found by both the Administrator and Contracting Officer to remedy the conflict of interest, the contracting action may proceed. If the Administrator and Contracting Officer determine that the contractor’s response does not resolve the conflict of interest, yet continuing with the contracting action with the offeror/contractor in question is considered in the best interest of the United States, a waiver in accordance with FAR 9.503 (48 CFR 9.503) may be executed. This waiver shall be submitted under the Contracting Officer’s signature and approved by the Administrator. The Administrator has been delegated Head of Contracting Activity authority by the USDA Senior Procurement Executive solely for the purpose of waiver approval.

**§ 1789.162 Indemnification agreement.**

As a condition of approving Borrower funding, the government will require the Borrower to enter into an Indemnification Agreement, in form and substance satisfactory to RUS, providing